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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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Emergency Petition of
Bell Atlantic-West Virginia for
Authorization to End West Virginia's
Bandwidth Crisis

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CC Docket No. 98-11

Reply Comments of
Intermedia Communications Inc.

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**Reply Comments of
Intermedia Communications Inc.**

Intermedia Communications Inc. ("Intermedia"), by its undersigned counsel, respectfully submits the following reply comments in support of pleadings filed by other carriers on August 10, 1998 in this proceeding. In initial comments, Intermedia demonstrated that the facts underlying Bell Atlantic's forbearance petition are best viewed as an attempt to game the regulatory process and that the legal underpinnings of Bell Atlantic's petition patently misconstrue of the Federal Communications Commission's ("Commission") own interpretation of its forbearance authority. Every party filing comments agreed on these points, and as such, the Commission should summarily reject Bell Atlantic's request for interLATA relief.

I. The facts presented by commenting parties support the contention that Bell Atlantic is attempting to game the regulatory process

Bell Atlantic's petition is a naked attempt to gain interLATA relief without satisfying the 14-point competitive checklist contained in section 271 of the Communications Act.¹ By Bell Atlantic's own admission, West Virginia is its bottom-rung priority when it comes

¹ Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 271. The 1996 Telecommunications Act amended the Communications Act of 1934. Citations in these reply comments reflect codification in the in the United States Code, and Intermedia refers to the Communications Act of 1934, as amended, as the "Communications Act" or "Act."

to obtaining section 271 approval.² Rather than open its markets to competition to benefit West Virginia consumers, Bell Atlantic instead seeks to extend its monopoly grip from the West Virginia local market into the West Virginia interLATA market.

No bandwidth famine exists in West Virginia. The Internet Access Points operated by the State of West Virginia currently are connected by high-speed links to the Internet.³ FiberNet has an OC-12 link “to an interexchange carrier with DS-3 capacity over an OC-48 system out of the state in two directions, and connections to Internet backbone providers outside of the state.”⁴ Moreover, WorldCom was able to order and obtain high-speed capacity between Pittsburgh and Morgantown “at approximately the same time that Bell Atlantic alleges that it could not obtain [this service] from any interexchange carrier....”⁵

Furthermore, the competitive market – and not the monopoly – is bringing more advanced telecommunications facilities to West Virginians. By the second quarter of 1999, ACC expects to complete the deployment of an OC-48 SONET backbone, which will connect a number of West Virginian cities, including Fairmont, Clarksburg, Parkersburg, and Charleston.⁶ ACC also plans to deploy an ATM network with high-speed transport between Morgantown WV and Pittsburgh PA. Additionally, Helicon’s existing OC-12 fiber connection between the Clarksburg LATA and Pittsburgh “is upgradable to OC-48 simply by upgrading the

² WorldCom at 10.

³ CompTel at 2.

⁴ FiberNet at 2.

⁵ WorldCom at 4-5.

⁶ ACC at 2.

electronics....”⁷ By contrast, Bell Atlantic – the local monopoly – either can’t or won’t provision high-speed intraLATA facilities.⁸

Clearly, West Virginia is not – by any contortion of the facts – the “digital island” that Bell Atlantic alleges. The market has responded, and continues to respond to and satisfy bandwidth demand in West Virginia. The monopoly, on the other hand, has failed to respond to the needs of consumers and to its statutory obligations. As such, Bell Atlantic’s petition is best viewed as an attempt to mischaracterize market conditions to undermine cornerstone procompetitive provisions of the Act, and the Commission should squarely reject such efforts.

II. The legal analysis presented by commenting parties supports the contention that Bell Atlantic’s petition misinterprets the Commission’s forbearance authority

Bell Atlantic’s petition seeks relief under section 706 of the Act.⁹ In the alternative, Bell Atlantic requests that the Commission grant a limited modification of LATA boundaries pursuant to section 3(25)(B) of the Act.¹⁰ Relief under either of these provisions is inappropriate, as demonstrated in the initial round of comments.

⁷ Helicon at 2.

⁸ WorldCom at 4-5.

⁹ Pub. L. 104-104, Title VII, § 706, Feb. 8, 1996 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157.

¹⁰ 47 U.S.C. § 153(25)(B).

As the Commission has stated, section 706 does not provide an independent grant of forbearance authority.¹¹ Under, section 10 of the Act, which provides substantive forbearance authority, the Commission may not forbear from applying section 251 or section 271 until they are fully implemented.¹² Bell Atlantic has made no claim that it has fully implemented either section 251 or section 271, and thus, Commission forbearance is inappropriate in this case.

A LATA boundary waiver under section 3(25)(B) similarly would be inappropriate. Section 3(25)(B) permits the Commission to modify, not eliminate, LATA boundaries, and any other conclusion would “eviscerate the competitive safeguards established by [s]ection 271.”¹³ Intermedia similarly agrees with WorldCom’s view that, while the Act permits the Commission to modify LATA boundaries, the Act does not “permit the kind of service-specific, outright elimination of LATA boundaries that Bell Atlantic is seeking.”¹⁴ The Commission should, therefore, reject Bell Atlantic’s request for a LATA boundary waiver under section 3(25)(B).

III. Conclusion

As demonstrated by the commenting parties, Bell Atlantic’s self-styled petition for emergency relief utterly lacks merit – both factually and legally. The facts indicate that West

¹¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order, and Notice of Proposed Rulemaking at ¶ 69 (rel. Aug. 7, 1998).


¹² 47 U.S.C. § 160; *see also*, CompTel at 3, Intermedia at 8, and WorldCom at 8.

¹³ CompTel at 8.

¹⁴ WorldCom at 9.

Virginia is not today a "digital island," and, indeed, the competitive market is responding very well to the bandwidth demands of West Virginia consumers. As a legal matter, the relief requested by Bell Atlantic is not available pursuant to section 706 or section 3(25)(B) Act. Moreover, the plain language of the Act states that the Commission may not forbear from sections 251 or 271 of the Act until these cornerstone provisions are fully implemented, and Bell Atlantic clearly has not fully implemented these provisions in West Virginia. For all these reasons, Bell Atlantic's petition fails to state a claim upon which the relief requested may be granted, and thus the Commission should summarily reject Bell Atlantic's request.

Respectfully submitted,


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